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In The

Supreme Court of the United States

October Term, 1991

BARBARA J. NORMAN, et al.,

Petitioners,

v.

DOROTHY REED, et al.,

Respondents.

On Writ Of Certiorari To The Supreme Court of Illinois

BRIEF FOR THE COMMITTEE FOR PARTY RENEWAL AS AMICUS CURIAE IN SUPPORT OF PETITIONERS

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Consent to file this brief as amicus curiae in support of Petitioners has been obtained from counsel for Petitioner Cook County Officers Electoral Board (No. 90-1435), Petitioners Barbara J. Norman, et al., (No. 90-1126), and Respondents Dorothy Reed, et al., and are on file with the clerk.

INTEREST OF THE AMICUS CURIAE

The Committee for Party Renewal is a bipartisan, voluntary association of over 200 political scientists, party leaders, and elected officials who believe that strong political parties are essential for effective popular control of government. The Committee is dedicated to strengthening parties – the only broad based, popular intermediaries between the people and their government – as representative and purposeful institutions. The Committee's members include the country's leading political scientists, among them James MacGregor Burns, Gerald Pomper, Everett Carll Ladd, Rep. William Thomas (R-CA), Rep. David Price (D-NC), William Crotty, John Jackson of Southern Illinois University, and John Bibby.

The Committee's Principles, published in 1977, hold that, "without parties there can be no organized and coherent politics. When politics lacks coherence, there can be no accountable democracy. Parties are indispensable to the realization of democracy." In support of its mission, the Committee conducts educational efforts, has provided testimony to Congress, and has participated in court actions in support of strong parties and responsive government.

I. SUMMARY OF ARGUMENT

The prevailing consensus that exists among political scientists about the importance of parties has been succinctly summarized: "No America without democracy, no democracy without politics, no politics without parties." Ladd, *Political Parties, "Reform," and American Democracy,* Challenges to Party Government (J. White, J. Mileur, eds. forthcoming, So. Ill. Univ. Press 1992). Effective third parties are a small but integral part of the American "two party" system. They raise issues, introduce ideas into political discourse, perform the vital function of educating voters to their points of view, link voters apathetic toward or alienated from the major parties to government, and provide a check on major party abuse of power. The legitimate purpose of ballot access laws is to prevent fraud and provide for orderly elections – not to limit the ability of representative third parties to place candidates before the electorate.

The challenged portions of the Illinois Election Code, Ill. Rev. Stat. ch. 46, para. 10-2 and 10-5 (1989), burden constitutional rights of party members and voters while advancing no state interest. Indeed, the Illinois code runs directly counter to state and societal interests in promoting a strong party system. These provisions of the Code constitute unwarranted interference in party affairs and an abuse of the state's authority to regulate elections, and have a detrimental effect on American political life.

II. ARGUMENT

A. Electoral Participation of Third Parties is an Integral and Beneficial Part of the American Political System.

The most distinctive feature of American democracy is the two-party system, or, more properly put, a multi-party system dominated by two major parties. E. Schattschneider, Party Government 67-68 (1942). Despite this two party dominance, political scientists have long recognized the vital supporting role played by "third" parties. As V.O. Key, one of the foremost observers of American polity, observed nearly three decades ago, third parties are "integral elements" of the American system. V. Key, Politics, Parties and Pressure Groups 279 (5th ed. 1964).

The contributions of third parties are many. As the major parties tend to seek the safe middle ground to appeal to the broadest possible segment of the electorate, it has often been left to third parties to articulate new ideas and to demonstrate the existence of voting blocks that can be wooed by a major party willing to adopt an issue. Key, *supra* at 258-59. There is little doubt that the Liberty and Free-Soil Parties helped to force the issue of slavery onto the nation's agenda in the 1840's. F. Smallwood, The Other Candidates 25 (1983). Among the many well established policy innovations first advocated by third parties are woman's suffrage, farm aid, child labor laws, and federal old-age pensions. S. Rosenstone, R. Behr, E. Lazarus, Third Parties in America 8 (1984). This role as innovators and catalysts to change prompted one former President of the American Academy of Historians to declare that a vote for third parties was "probably the

most powerful vote that has ever been cast." Hicks, *The Third Party Tradition in American Politics*, 20 Miss. Valley Hist. Rev. 3, 27 (1933).

In a similar vein, third parties propose and explain new ideas and policies to the public. Smallwood, *supra* at 26. Third party campaigns are often geared more to education than election. Their campaigns become a forum for a substantive debate of new ideas, far removed from the sound-bites and glossy media campaigns of the major parties. They thus serve an important public purpose even when their ideas are ultimately rejected.

Third parties add to the stability of the American two-party system by serving as outlets for constructive protest and by providing a vehicle for disenfranchised minorities to participate in the system. For example, studies have shown that supporters of George Wallace's 1968 American Independent Party generally felt alienated from society and ignored by the major political parties and their presidential nominees. Pettigrew, Riley & Vanneman, *George Wallace's Constituents*, 5 Psychology Today 47 (Feb. 1972). Similarly, supports of John Anderson's independent candidacy in 1980 were expressing displeasure with the two major party presidential candidates. G. Pomper, The Election of 1980 (1981). The Harold Washington Party, which would be stricken from the ballot if the challenged provisions of the Illinois code are upheld, brilliantly illustrates this paradigm. Black voters traditionally vote less than their white counterparts and feel less a part of American society. Many African-Americans still fear reprisal for exercising their right to vote. St. Angelo & Puryear, *Fear, Apathy, and Other Dimensions of Black Voting*, The New Black Politics (M. Preston, L.

Henderson, Jr., P. Puryear, eds. 1982) The Harold Washington Party, by appealing directly to voters who believe they have been shut out of the system, serves the classic third party function of linking alienated voters to government. *See* G. Sartori, Parties and Party Systems 25 (1976).

By campaigning on new and alternative themes and issues, and reaching out to alienated voters, third parties also combat voter apathy. Turnout in American presidential elections fell from 60.9% in 1968 to just 50.2% in 1988.[1] In 1988, 57% of respondents told the Gallup organization that they wished they had, "a different set of choices." J. White, the New Politics of Old Values 173 (1990). Third parties combat apathy by offering choice to voters unimpressed with major party candidates. D. Mazmanian, Third Parties in Presidential Elections 77-81 (1974). In 1990, third parties drew 2.8 million votes in the 23 gubernatorial races, and 480,000 votes in the 13 U.S. Senate races, in which they appeared on the ballot.[2]

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[1] Percentages of registered voters voting have been: 1968, 60.9%; 1972, 55.2%; 1976, 53.5%; 1980, 52.6%; 1984, 53.4%; and 1988, 50.2%. F. Sorauf, H. Beck, Party Politics in America 209-210 (1988); P. Abramson, J. Aldrich, D. Rohde, Change and Continuity in the 1988 Elections (1990).

[2] *See* Alaska Official Returns (1990); Arizona Official Canvass (1990); California Statement of Votes (1990); Connecticut Statement of Vote (1990); Delaware Official Results of General Election (1990); Georgia Tabulation by Counties (1990); Hawaii Results of Votes Cast (1990); Illinois Official Vote (1990); Iowa Official Canvass Summary (1990); Kansas Election Statistics (1990); Maine General Election Tabulation (1990); Massachusetts Returns of Votes (1990); Michigan General Election Returns (1990); Minnesota Election Results (1990);

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In the 1990 elections, 77 of 435 U.S. House seats – 18% of the total – went uncontested by one of the major parties. Clerk of the U.S. House of Representatives, Statistics of the Congressional Election of November 6, 1990 (1991). There was no major party contest in 34.3% (2099 of 6114) of the races for state legislatures.[3] In these situations third parties provide choice and some level of

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Montana Report of Official Canvass (1990); Nevada Official Abstract of Votes Cast (1990); New Hampshire Manual for General Court (1991); New Jersey Results of General Election (1990); New York Official Election Returns (1990); Oklahoma Election Results and Statistics (1990); Oregon Official Abstract of Votes (1990); South Carolina General Election Returns (1990); South Dakota Official Election Returns (1990); Tennessee General Election (1990); Texas General Election Returns (1990); Vermont Official Report of the Canvassing Committee (1990); Virginia Official Election Returns (1990).

[3] *See* Alabama certified vote totals (1990) (unpublished); Alaska Official Returns (1990); Arizona Official Canvass (1990); Arkansas General Election Returns (1990); California Statement of Votes (1990); Colorado Abstract of Votes Cast (1990); Connecticut Statement of Vote (1990); Delaware Official Results of General Election (1990); Florida Official General Election Returns (1990); Georgia Tabulation by Counties (1990); Hawaii, Results of Votes Cast (1990); Idaho Abstract of Votes (1990); Illinois Official Vote (1990); Indiana Election Report (1990); Iowa Official Canvass Summary (1990); Kansas Election Statistics (1990); Kentucky Official Election Returns (1990); Report of the Secretary of State of Louisiana (1990); Maine General Election Tabulation (1990); Maryland General Election Returns (1990); Massachusetts Returns of Votes (1990); Michigan General Election Returns (1990); Minnesota Election Results (1990); Mississippi Certified Returns (1990); Missouri Certified Totals of the General Election (1990); Montana Report of Official

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competition where the major parties choose not to. Indeed, in Chicago, it is the Harold Washington Party that provides the most effective opposition in an area where the Republican Party has long been ineffective at wooing voters.[4]

Finally, third parties serve as a constant check on the major parties. Their existence, as competition waiting in the wings, forces the major parties to be responsive to change. The most successful third party movements are a response to major party failure. Rosenstone, *supra* at 215-16. Major party performance is most satisfactory when the threat of third parties exists. Smallwood, *supra* at 27; Mazmanian, *supra* at 150.

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Canvass (1990); Nevada Official Abstract of Votes Cast (1990); New Hampshire Manual for General Court (1991); New Jersey Results of General Election (1990); New Mexico Official Returns (1990); New York Official Election Returns (1990); North Carolina Abstract of Votes Cast (1990); North Dakota Official Abstract of Votes Cast (1990); Ohio Report of Votes (1990); Oklahoma Election Results and Statistics (1990); Oregon Official Abstract of Votes (1990); Pennsylvania General Election Official Returns (1990); Rhode Island Tabulation of Votes Cast (1990); South Carolina General Election Returns (1990); South Dakota Official Election Returns (1990); Tennessee General Election (1990); Texas General Election Returns (1990); Utah Official Returns (1990); Vermont Official Report of the Canvassing Committee (1990); Virginia Official Election Returns (1990); Washington Official Returns of the General Election (1990); West Virginia Official Returns of General Election (1990); Wisconsin Results of General Election (1990); Wyoming Official Directory (1991). Nebraska holds nonpartisan elections.

[4] The Harold Washington Party's 1989 mayoral candidate, Timothy Evans, finished second with 41% of the vote; its 1991 mayoral candidate, R.E. Pincham, finished second with 25% of the vote, to the third place Republican's 3.7%.

Third parties have played a greater role in American politics than most casual observers realize. Prior to 1920, the composition of the U.S. House of Representatives typically included up to a dozen or more third party members. Third parties elected governors, gained majority control of city administrations and, in some cases, won majorities in state legislatures, all without upsetting the basic stability of the two-party system. *See* Smith, *Judicial Protection of Ballot-Access Rights*, 28 Harv. J. on Legis. 167, 169-171 (1991).

In fact, despite their occasional successes, third parties pose no threat to two party stability. Even if a third party were to replace one of the major parties, as the Republicans replaced the Whigs between 1854 and 1856, the system would remain one of two party domination. "We could not discard the two-party system and adopt a multiparty system in the United States . . . even if we wanted to do so." Schattschneider, *supra* at 67.

The reason for this is the U.S. system of single-member, winner take all districts. This system is used in all federal elections, including the electoral college, by all states, and for most local offices. Because a party receives no representation unless it can carry the electoral district with a plurality, the system puts severe pressure on parties hoping to gain over time. Voters will gravitate toward the most like-minded candidate perceived as having a chance to win. Facing a complete exclusion from office, parties are pressured to coalesce with like-minded parties until just two major parties remain. Typically, third party electoral successes are followed closely by changes in the major party platforms aimed at either absorbing the third party outright, or at least convincing its voters that the

major party is a palatable enough alternative that it will not pay to vote for the third party, which is unlikely to gain power. Schattschneider, *supra* at 69-74. Only by concentrating strength in particular geographic regions have third parties been able to prosper in countries with single member districts, and even then they normally operate as one of just two dominant parties in their region, typically coalescing with one of the major parties when national issues are at stake. D. Rae, Political Consequences of Electoral Laws 92-95 (1971).

Given this, the proper role of ballot access laws is merely to provide an orderly method of conducting elections. Ballot access laws are a particularly clumsy and unnecessary mechanism for maintaining political stability, *Storer v. Brown*, 415 U.S. 724, 736 (1974); preventing factionalism, *Tashjian v. Republican Party of Connecticut*, 479 U.S. 208, 223 (1986); assuring majority winners, *Williams v. Rhodes*, 393 U.S. 23, 32 (1968); or fulfilling any state interest other than avoiding voter confusion and assuring fair and honest elections.[5]

When ballot laws are used to keep bona fide third parties off the ballot, they rob the American political system of a small but important part of its machinery for maintaining a stable, responsive democratic system.

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[5] In fact, after preventing fraud, the secondary objective of early supporters of the government printed "Australian" ballot was to make it *easier* for third parties to contest elections. *See* J. Wigmore, Australian Ballot System 25-26 (1889). Sixteen states originally adopted the Australian ballot with no access requirement at all save notice to the state. *See* A. Ludington, American Ballot Laws: 1888-1910 (1911).

B. The Challenged Provisions of the Illinois Election Code Are Overly Restrictive and Serve No Legitimate State Interest

Petitioners have contested the constitutionality of Section 10-2 of the Illinois Election Code, Ill. Rev. Stat. ch. 46, para. 10-2 (1989), as it requires 50,000 petition signatures for a new party to qualify for the ballot in a portion of the state, but only 25,000 signatures to qualify statewide. Amicus curiae is of the opinion that this provision is facially invalid under this Court's holding in *Illinois State Bd. of Elections v. Socialist Workers Party*, 440 U.S. 173 (1979), but leaves discussion of the issue to the parties. Of great immediate interest to amicus curiae, because the issues have not previously come before this court, is whether the state has a compelling interest in either restricting the use of a party's name as it expands into new portions of the state, Ill. Rev. Stat. ch. 46, para. 10-5 (1989), or in requiring a party to nominate a full slate of candidates in the state or district within which a new party seeks to operate, Ill. Rev. Stat. ch. 46, para. 10-2 (1989).

This Court has long recognized that state ballot access laws:

> place burdens on two different, although overlapping kinds of rights – the right of individuals to associate for the advancement of political beliefs, and the right of qualified voters, regardless of their political persuasion, to cast their votes effectively.

Williams v. Rhodes, 393 U.S. 23, 30 (1968).

As a result, states are required to justify their ballot access laws by identifying a compelling state interest

served by those laws.[6] Among those interests previously recognized by this Court are avoiding voter confusion, promoting political stability, avoiding factionalism, avoiding clogged election machinery, blocking frivolous candidacies, and generally assuring fair and honest elections.[7] Sections 10-2 and 10-5 of the Illinois Election code are extraordinarily ill-suited to advance any of these state interests.

Amicus Curiae notes, at the outset, that no other state has adopted the "complete slate" requirement of Section

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[6] Past decisions of this Court have left some doubt as to the standard of review to be applied. In *Williams*, 393 U.S. 23, and *Illinois State Bd. of Elections*, 440 U.S. 173, the Court utilized a strict scrutiny standard of review. However, in *Anderson v. Celebrezze*, 460 U.S. 780, 789 (1983), the Court appeared to use an open-ended balancing test. Given the extent to which the system of single member districts assures a "two-party" system, there is serious doubt whether any ballot access law requiring more than a minimal showing of popular support can qualify as the least drastic means to meet state interests. However, under either standard, the requirements of Sections 10-2 and 10-5 of the Illinois Election Code burden fundamental rights to an extent not justified by state interests.

[7] *See Jenness v. Fortson*, 403 U.S. 431, 442 (1971); *Bullock v. Carter*, 405 U.S. 134 (1972); *Storer v. Brown*, 415 U.S. at 736; *American Party v. White*, 415 U.S. 767, 782 n.14, *reh'g denied* 417 U.S. 926 (1974). However, the Court has made clear that political stability is not an adequate interest where it is a mere excuse to protect existing parties from competition. *Anderson v. Celebrezze*, 460 U.S. at 801.

10-2.[8] While not dispositive of the state's interest, this fact alone casts serious doubt on whether the state's interest is sufficient to justify the burdens placed on fundamental rights. A closer examination shows that the full slate requirement, in fact, runs directly counter to state interests and is an unwarranted intrusion into party affairs.

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[8] *See* Ala. Code § 17-8-2.1 (1988); Alaska Stat. § 15.25.140, *et seq.* (1988); Ariz. Rev. Stat. Ann. § 16-341 (1984 & Supp. 1990); Ark. Stat. Ann. § 7-1-101, *et seq.* (1991); Cal. Elec. Code § 6430 (West 1977); Colo. Rev. Stat. § 1-4-801 (Supp. 1990); Conn. Gen. Stat. Ann. § 9-453a, *et seq.* (West 1989); Del. Code Ann. tit. 15 § 3001, *et seq.* (1981 & Supp. 1990); D.C. Code Ann. § 1-1312 (Supp. 1990), Fla. Stat. Ann. § 99.095, *et seq.* (West 1982 & Supp. 1991); Ga. Code Ann. § 21-2-130, *et seq.* (1987 & Supp. 1990); Haw. Rev. Stat. § 11-62, *et seq.* (1985 & Supp. 1990); Idaho Code § 34-501 (Supp. 1990); Ind. Code Ann. § 3-8-6-1, *et seq.* (Burns 1988 & Supp. 1990); Iowa Code § 45.1, *et seq.* (Supp. 1991); Kan. Stat. Ann. § 25-301, *et seq.* (1986 & Supp. 1990); Ky. Rev. Stat. Ann. § 118.305, *et seq.* (Michie/Bobbs-Merrill Supp. 1990); La. Rev. Stat. Ann. 18 § 461, *et seq.* (West 1979 & Supp. 1991); Me. Rev. Stat. Ann. tit. 21-A § 301, *et seq.* (Supp. 1990); Md. Elec. Code Ann. art. 33 & 4B, *et seq.* (Supp. 1989); Mass. Gen. Laws Ann. ch. 53 § 6, *et seq.* (1990 & Supp. 1991); Mich. Comp. Laws § 168.685 (Supp. 1991); Minn. Stat. § 204B.07, *et seq.* (Supp. 1990); Miss. Code Ann. § 23-15-1051, *et seq.* (1990); Mo. Ann. Stat. § 115.315 (Vernon Supp. 1991); Mont. Code Ann. § 13-10-601 (1989); Neb. Rev. Stat. § 32-526, *et seq.* (1989); Nev. Rev. Stat. § 293.171, *et seq.* (1990); N. H. Rev. Stat. Ann. § 655:40, *et seq.* (1986); N.J. Rev. Stat. § 19:13-3, *et seq.* (1989); N.M. Stat. Ann. § 1-7-1, *et seq.* (1985 & Supp. 1990); N.Y. Elec. Law § 6-100, *et seq.* (McKinney 1978 & Supp. 1991); N.C. Gen. Stat. § 163-96 (1987); N.D. Cent. Code § 16.1-11-30 (Supp. 1989); Ohio Rev. Code Ann. § 3517.01, *et seq.* (Anderson 1988 & Supp. 1990); Okla. Stat. Ann. tit. 26 § 1-108 (West 1991); Or. Rev. Stat. § 249.732 (Supp. 1990); Pa. Stat. Ann. tit. 25 § 2911, *et seq.* (Purdon 1963 & Supp. 1991); R.I. Gen. Laws § 17-14-7 (Supp.

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The full slate requirement, by requiring parties to nominate candidates for offices they do not wish to contest, clogs electoral machinery by adding to the number of candidates. It virtually mandates "line-holding" candidacies by frivolous candidates whose only purpose is to assure that their party's more serious candidates qualify for the ballot. Such frivolous candidates are likely to confuse voters far more than the presence of a third party on the ballot.

The full slate requirement does nothing to establish whether those candidates that *are* nominated by a new party have demonstrated the minimum level of support needed to be placed on the ballot.

In *Lubin v. Panish*, 415 U.S. 709 (1974), the Court struck down relatively innocuous filing fees,[9] noting that they bore little relationship to the seriousness of a candidacy or to a candidate's level of popular support. The full slate requirement bears even less relationship to a candidate's seriousness. If full slate laws had been widely adopted, every significant third party candidate for the

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1989); S.C. Code Ann. § 7-9-10 (Law. Co-op. Supp. 1990); S.D. Codified Laws Ann. § 12-5-1, *et seq.* (1982 & Supp. 1991); Tenn. Code Ann. § 2-13-201 (1985); Tex. Elec. Code Ann. § 181.005, *et seq.* (Vernon 1986 & Supp. 1991); Utah Code Ann. § 20-3-2.5 (Supp. 1991); Vt. Stat. Ann. tit. 17, § 2301, *et seq.* (1982 & Supp. 1990); Va. Code Ann. § 24.1-168 (Supp. 1990); Wash. Rev. Code § 29.24.010, *et seq.* (1965 & Supp. 1991); W.Va. Code § 3-5-22, *et seq.* (1990); Wis. Stat. § 8.01, *et seq.* (1986 & Supp. 1990); Wyo. Stat. § 22-4-201 (Supp. 1990).

[9] The filing fee in question in *Lubin* was just $706.60. 415 U.S. at 711.

Presidency in this century – including Theodore Roosevelt, Robert LaFollette, George Wallace, and John Anderson – would have been excluded from virtually every state ballot. Likewise, smaller third parties which, because of their modest vote totals, are required to regularly file petitions to appear on the ballot, often fail to nominate full slates of candidates. Even when they could meet the requirement, these smaller parties frequently choose not to contest every race so that they can focus their limited resources on those races deemed most important to them, including those where they perceive the best chance of winning.

There is no state interest in forcing third parties to nominate full slates of candidates. Established parties in Illinois are free to pick and choose the races they will contest, with no apparent detriment to the state. In 1986 the Democratic Party of Illinois had no candidate for Governor on the ballot. In 1990, 50 of 118 races for the Illinois House and seven of 20 races for the Illinois Senate had no major party contest.[10]

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[10] Illinois Official Vote (1990). In 1990, either or both of the major parties did not nominate a full slate of candidates for statewide office in thirteen states. See Alabama, certified vote totals (1990) (unpublished); Arizona Official Canvass (1990); Arkansas General Election Returns (1990); Georgia Tabulation by Counties (1990); Idaho Abstract of Votes (1990); Mississippi Certified Returns (1990); Nevada Official Abstract of Votes Cast (1990); New Mexico Official Returns (1990); Oregon Official Abstract of Votes (1990); South Carolina General Election Returns (1990); Texas General Election Returns (1990); Virginia Official Election Returns (1990); West Virginia Official Returns of General Election (1990).

Whether or not a party should nominate candidates for a few offices, or all of them, is a *strategic* decision traditionally made by the parties free of government interference – be they "minor" or "major" parties. Parties decide how much of their precious resources, including both money and manpower, they wish to devote to their candidates' campagins. Frequently, parties make decisions *not* to contest offices, finding no suitable candidates, or believing that such a contest would be a waste of time.

Indeed, the right not to nominate would seem to be an inseparable part of the fundamental right to associate for political ends. This Court has appropriately recognized that the state has no compelling interest in determining political party strategies, telling a party how to choose its nominees, or protecting parties from their own potentially foolish decisions. *Eu v. San Francisco Democratic Comm.*, 489 U.S. 214 (1989); *Tashjian v. Republican Party of Connecticut*, 479 U.S. 208 (1986). Parties are in the best position to know their own interests.

Likewise, Section 10-5 of the Illinois Election Code, which restricts the ability of the Harold Washington Party to expand into new portions of the state under its own name, serves no rational state interest. Admittedly the state has no interest in avoiding the voter confusion likely to result if various distinct parties operated under the same, or even substantially similar names around the state. However, in this case, it is undisputed that the candidates seeking to use the Harold Washington Party name in suburban Cook County have permission and are members of the same party already established in the city of Chicago. *See Reed v. Norman*, No. 70833 slip op. (Ill.

Oct. 12, 1990) (Miller, J., dissenting). The decision below amounts to the rather Kafkaesque suggestion that a party should be kept off the ballot because voters will be confused if the party campaigns under its own name.

From a standpoint of linking voters to government through identification with political parties, and providing for political vision through articulated party platforms, it is hard to imagine a more destructive law, or one better designed to confuse voters, than one which requires a party to operate under different names in different political subdivisions. Far from serving a valid state interest, Section 10-5 of the Illinois Election Code, as interpreted by the Illinois Supreme Court, promotes voter confusion and is contrary to the best interests of political parties and the American political system.

In many ways, the Harold Washington Party represents the classic model of third party activity in America. In an area long noted for an absence of two party competition, the Party has provided such competition. It has done so by bringing into the political system voters who have long felt ignored by that system and perhaps even afraid to participate in that system. There can be little doubt of the Harold Washington Party's substantial popular support or legitimacy. Unlike many third parties, it not only seeks to educate, but realistically seeks to govern. Illinois can have no legitimate interest in keeping this party off its ballot.

The demands of democracy make it essential that third parties be permitted to run. However, because state legislators are not only overwhelmingly members of the two major parties, but human, there will always be some

tendency to overly discount the rights of third party members, to ignore the benefits of third party activity, and to use ballot access laws not only to prevent fraud and conduct orderly elections, but to eliminate political competition. R. Huckshorn, Political Parties in America 53 (1984). It is incumbent on this court to examine carefully the proferred interests of the states in their ballot access laws, and where those laws needlessly infringe on the fundamental First and Fourteenth Amendment rights of third party activists, members, and voters, to strike those statutes down.

III. CONCLUSION

Section 10-2 and 10-5 of the Illinois Election Code burden the fundamental rights of voters and cannot be justified in terms of legitimate state interest. The decision of the Illinois Supreme Court should be reversed by this Court.

Respectfully submitted,

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